



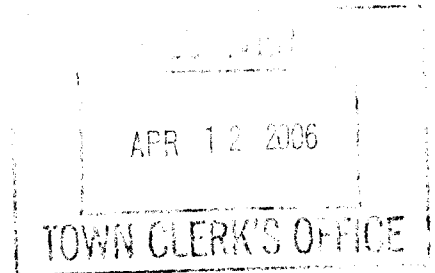
## TOWN OF NEW WINDSOR

### ZONING BOARD OF APPEALS

#### Regular Session

Date: MARCH 13, 2006

#### AGENDA



7:30 p.m. – Roll Call

Motion to accept minutes of **FEBRUARY 27, 2006** meetings as written.

#### PRELIMINARY MEETINGS:

1. **JOHN & SHARON BETTS (06-07)** Request to replace existing single-family home with a larger single-family home in a C-Zone on Rt. 94 **(69-4-10)**
2. **ELIZABETH HORNSBERGER (06-08)** Request for 23 ft. Front Yard Setback for existing front porch with roof at 117 Chestnut Drive in an R-4 Zone **(17-2-16)**
3. **NEIL SCHLESINGER (06-10)** Request for 3,770 sq. ft. Minimum Lot Area for single family home on Station Road in an R-1 Zone **(57-1-2.7)**
4. **JOSE ALEMANY (06-11)** Request for 14 ft. Rear Yard Setback for proposed attached rear decks at 2641 Liberty Ridge in an R-3 Zone **(64-2-32)**
5. **NORMAN VITALE (06-12)** Request for 12 ft. Front Yard Setback for proposed addition on a corner lot at 3 Shaw Road in an R-1 Zone **(53-3-4)**
6. **BETTY LAWRENCE (06-13)** Request for 80 ft. Rear Yard Setback for proposed attached rear deck at 405 Old Forge Hill Road in an R-5 Zone **(71-1-8)**

#### PUBLIC HEARINGS:

7. **EDWARD JACOPINO (d/b/a Faricellia's Market) (06-04)** Request for Use Variance for proposed Multi-family/Multiple Dwelling Use (increase in non-conformity); and Parking Variances for off-street parking of 5 spaces as referred from Planning Board for site at 238 Walsh Avenue in an R-4 Zone **(13-2-17)**

March 13, 2006

1

TOWN OF NEW WINDSOR  
ZONING BOARD OF APPEALS  
MARCH 13, 2006

MEMBERS PRESENT: KIMBERLY GANN, ACTING CHAIRMAN  
KATHLEEN LOCEY  
ERIC LUNDSTROM

ALSO PRESENT: MICHAEL BABCOCK  
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.  
ZONING BOARD ATTORNEY

MYRA MASON  
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN  
PAT TORPEY

REGULAR MEETING

---

MS. GANN: I'd like to call the March 13, 2006 meeting  
of the New Windsor Zoning Board of Appeals to order.

APPROVAL OF MINUTES DATED FEBRUARY 27, 2006

---

MS. GANN: Motion to accept the minutes of February 27.

MR. LUNDSTROM: I have two items to bring up there on  
page number 2, it has Mr. Lundstrom voted yes to  
approve the previous minutes, that should be abstain,  
I was not at the previous meeting, so I could not vote

yes or no. Second item I have is if you direct your attention to page 16 document will probably be used for historic purposes, I need some clarification from Miss Locey correct 14 foot yard variance setback, what should that be?

MS. LOCEY: I have the paperwork, I'm sure it's--

MS. MASON: It should be 10 foot, he changed from 14 to 10.

MR. LUNDSTROM: So should be 10 feet. With those two corrections, I move the corrected minutes be approved.

MS. LOCEY: I'll second that motion.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MS. GANN	AYE

PRELIMINARY\_MEETINGS:

---

JOHN\_&\_SHARON\_BETTS\_(06-07)

---

Mr. John Betts appeared before the board for this proposal.

MS. GANN: Request to replace existing single family home with a larger single family home. State your case loud and clear so this lady over here can hear what you're saying.

MR. BETTS: I'm here this evening cause of the property that my wife owns on Route 94 in Vails Gate.

MS. LOCEY: State your name.

MR. BETTS: My name is John Betts and the property that my wife owns in Vails Gate there's an existing two-family home approximately 1,400 square feet, single family residence approximately 14, there's a home in the back 1,200 square feet, our wish is to demolish the existing single family home and put up another structure that's just a little bit larger than that on the same property. Along with that, there's an existing three car garage that we want to demolish with the new structure and add another garage to that.

MS. LOCEY: First picture, what's this?

MR. BETTS: That's just a picture of the back yard, that's the back of the house I want to demolish, that's the neighbor's property over there.

MR. LUNDSTROM: Second photo is a copy of the three car garage you want to demolish also?

MR. BETTS: I believe so.

MS. GANN: How large would the single family home be

that you want to replace it?

MR. BETTS: It's going to be about 2,000 square feet.

MR. BABCOCK: There should be two surveys that you're looking at, one should say on the top right existing and the second one would say proposed, then if you could see the layout of the house, the existing house that's there now is narrow with the three car garage to the, facing the from 94 to the right-hand side and the proposed layout it's a different shape home with the attached three car garage in the rear of it.

MR. BETTS: I may amend the plan to make it a two car garage.

MR. BABCOCK: That's fine.

MR. LUNDSTROM: On the proposed new construction plot plan you also show a double wide, will that be removed?

MR. BETTS: No, sir, that will stay there.

MR. LUNDSTROM: Does that comply with zoning?

MR. BABCOCK: Yeah, that's existing, the front one, the proposed single wide was approved for a double wide several years ago. The reason they're here tonight is because this is in a C zone commercial zone, single family homes are not allowed in a C zone. What the law says is that if you want to change and rebuild the single family home exactly on the same footprint you can do that but to increase the degree of non-conformity you need to go to the zoning board so since they're making a single-family home larger in a different layout, getting closer to property lines cause there are no setbacks for a single family zone, for a single family house in a commercial zone so they're getting closer to the property lines it's a bigger home so therefore they need a variance to do

that.

MS. GANN: What about developmental coverage?

MR. BABCOCK: There's no such thing because that's not allowed there, so if you look for single family home and what the requirements are there is none because it's not allowed to be there.

MR. LUNDSTROM: Look at the proposed new construction plan, looks like you've got a 6 foot setback from the property line?

MR. BETTS: On the new one?

MR. BABCOCK: Yes.

MR. BETTS: No, sir, I don't think.

MR. BABCOCK: Here.

\*MR. BETTS: No, actually, the plan I sent to the planning board to you folks is different than this one, actually, I set it back 15 feet even though there wasn't any setback requirements, I tried to conform to what I knew 40 feet from the road or 15 feet, I made it 15 feet from the side and on the other side it was quite a bit more cause it wasn't that long.

MS. MASON: John, is that this one?

MR. BETTS: That's correct, actually, it's 25 feet.

MS. GANN: Taking out any substantial vegetation with the new proposed home?

MR. BETTS: Oh, no.

MR. BABCOCK: It's pretty much a cleared lot, they have some trees and some shrubs and I'm sure the new home

would be landscaped, you know, similar to what they have there now.

MS. GANN: Does it go over any easements that you know of?

MR. BETTS: Not to my knowledge, I don't think there's any easements there.

MR. LUNDSTROM: Do you envision once you get the new house built the double wide would be occupied?

MR. BETTS: Yes, sir, the single family residence now is my mother-in-law, she's 84 years old, although at this time, she's fine, she feels at some point she may have trouble navigating the stairs, so she's going to go live in the double wide in the rear of the property where I live now and my wife and son and I will occupy the new structure.

MS. GANN: I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of John and Sharon Betts to replace an existing single family home with a larger single family home in a C zone on Route 94.

MR. LUNDSTROM: Madam Chairman, I will second that motion.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MS. GANN	AYE

ELIZABETH\_HORNSBERGER\_(06-08)

---

MS. GANN: I want to clarify to the audience that we usually have two meetings, one's a preliminary hearing where you come, you state your case as to why you're here and then you have to come back for a second meeting called a public hearing, okay, so that's pretty much, you know, two meetings that we do have here. So the next order of business is Elizabeth Hornsberger. Please step forward and please tell us why you're here this evening.

Mr. Ed Buscemi from Rainbow Construction and Ms. Elizabeth Hornsberger appeared before the board for this proposal.

MR. BUSCEMI: I want a variance for her to put up this roof that was up here before.

MR. LUNDSTROM: Is that a photograph that we have copies of?

MS. HORNSBERGER: Yes.

MR. BUSCEMI: The roof collapsed during a wind storm back early winter September fall and before we put it back up we've got to go through regulations.

MS. LOCEY: You say it was non-conforming now that it's come down you need--

MR. BUSCEMI: It wasn't put up properly in the first place with a building permit.

MS. GANN: Are you looking to build out on the home as well?

MR. BUSCEMI: No, that roof that, that's, this was originally up here, however, when she had to put up--



MS. LOCEY: I was just asking if the existing roof that had come down was non-conforming and that's why they need to get a variance now I think that's true.

MS. GANN: Okay.

MS. LOCEY: So no other construction to the house, just--

MS. HORNSBERGER: Putting up this roof.

MS. LOCEY: Same size?

MR. BUSCEMI: Same, same exact roof.

MS. HORNSBERGER: It's got two columns.

MR. BUSCEMI: If you have the drawings by Cuomo Engineering, the roof itself, just a matter of lifting it up and replacing the columns so--

MR. LUNDSTROM: Will this involve closing that deck or is it just putting a roof on it?

MS. HORNSBERGER: No, just roof on it.

MR. LUNDSTROM: With two columns supporting the far ends and the roof is attached to the house on the other end?

MR. BUSCEMI: Attached with lags to the soffit and then it's going to have columns in the front.

MS. LOCEY: Similar to other roofs, porches, covered porches in the area?

MR. BUSCEMI: With the exception of it's a metal roof in this situation.

MS. LOCEY: About the same size and shape?

MR. BUSCEMI: Yeah, I believe it's 10 x 10.

MR. LUNDSTROM: So it's not a shingle roof, it's a metal roof?

MR. BUSCEMI: Yes.

MR. LUNDSTROM: Was it metal before?

MR. BUSCEMI: Same as before just lifting it back up.

MS. HORNSBERGER: It was already existing.

MS. GANN: There's no easements that it goes over that you know of?

MS. LOCEY: Porch itself is not over any easements?

MS. HORNSBERGER: No.

MS. LOCEY: But I know it sounds ridiculous but we're supposed to ask these questions, are you cutting down any trees or substantial vegetation but since it's a roof, none of those really apply, is that true?

MS. HORNSBERGER: Yes.

MS. GANN: I'll accept a motion.

MR. LUNDSTROM: I will move that the application for Elizabeth Hornsberger's request for 23 foot front yard setback for existing front porch with roof at 117 Chestnut Drive in an R-4 zone, section, block and lot 17-2-16 be approved and allowed to go to a public hearing.

MS. LOCEY: I will second that motion.

ROLL CALL

March 13, 2006

10

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MS. GANN	AYE

NEIL\_SCHLESINGER\_\_(06-10)

---

Mr. Neil Schlesinger appeared before the board for this proposal.

MS. GANN: Request for 3,770 sq. ft. minimum lot area for single family home on Station Road in an R-1 zone.

MR. SCHLESINGER: Good evening, my name is Neil Schlesinger, I own a piece of property on Station Road, Town of New Windsor and the piece of property is located in the R-1 zone and I'd like to build a house on it. The zoning was changed two years ago, 2 1/2 years ago, required zoning is 80,000 square foot, I'm short 3,770 feet approximately, well, 3,770 feet and that's why I'm before you tonight.

MS. LOCEY: So the lot is just a little bit smaller than what the existing zoning requires?

MR. SCHLESINGER: Yes.

MR. LUNDSTROM: How long have you owned the parcel of land?

MR. SCHLESINGER: Twenty-three years.

MR. LUNDSTROM: This is the first time you're thinking of putting a dwelling on it?

MR. SCHLESINGER: No, we've been thinking about it but just was a little late in making the application before the zoning changed.

MS. GANN: How large will the new home be, Neil?

MR. SCHLESINGER: About 2,200 square feet.

MS. LOCEY: Am I right, Mike, that the lot itself is just somewhat smaller, doesn't have anything to do with

any front yard setbacks?

MR. SCHLESINGER: No, we'll be able to conform with everything with the exception of the 80,000 square foot lot size.

MR. BABCOCK: The lot area in this zone was one acre and it went from one acre to 80,000 square feet which is just under two acres.

MS. GANN: Will there be substantial vegetation being taken down to build the house?

MR. SCHLESINGER: No, everything will be taken care of prior to that.

MR. BABCOCK: Well, I mean, it's not enough to make sure that there's a spot for a house so there's, it's on an area where it's wooded, house, driveway and some lawn, I'm sure.

MS. LOCEY: All other zoning requirements can be achieved?

MR. SCHLESINGER: Absolutely everything will be conforming with the exception of this size of the lot.

MR. LUNDSTROM: So basically when you first bought the lot, the zoning was 1 acre?

MR. SCHLESINGER: That's correct.

MR. LUNDSTROM: This plot plan shows it's 1.75 so it's increased to a little bit under 2, so it's not that much.

MR. SCHLESINGER: That's correct.

MS. GANN: The home is it similar in size to other homes in the area?

MR. SCHLESINGER: There's new homes in the area that are significantly larger.

MS. GANN: But in your opinion it fits into the--

MR. SCHLESINGER: Absolutely, sure.

MS. GANN: Does it go over any easements that you know of?

MR. SCHLESINGER: None.

MS. GANN: Any other questions? I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Neil Schlesinger regarding his request for a 3,770 square foot minimum lot area for a single-family home on Station Road in an R-1 zone.

MR. LUNDSTROM: Madam Chairman, I will second that motion.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MS. GANN	AYE

JOSE\_ALEMANY\_(06-11)

---

MS. GANN: Request for 14 ft. rear yard setback for proposed attached rear decks at 2641 Liberty Ridge.

Mr. Jose Alemany appeared before the board for this proposal.

MR. ALEMANY: My name is Jose Alemany, I reside at 2641 Liberty Ridge, I'm here to request a 14 foot setback for proposed deck.

MR. LUNDSTROM: You said 14 foot setback?

MR. ALEMANY: Correct.

MS. LOCEY: A variance.

MR. LUNDSTROM: Cause I'm seeing 16 foot setback.

MS. GANN: Is it coming right off of this ladder with the stairs that are there now?

MR. ALEMANY: Correct, so it will just be a walk-out from the bay.

MS. LOCEY: How large a deck is it?

MR. ALEMANY: 44 x 16.

MS. LOCEY: Is that equivalent again to your neighbors, will it fall into the character of the neighborhood?

MR. ALEMANY: Correct.

MS. LOCEY: Any substantial vegetation that needs to be removed?

MR. ALEMANY: No.

MS. LOCEY: Creating any drainage problems or are there any easements?

MR. ALEMANY: No easements or drainage problems.

MS. GANN: Any other questions?

MR. LUNDSTROM: Looks like you have two air conditioning compressors that may have to be moved.

MR. ALEMANY: There's only one, the one facing the house on the right side, they're going to move that to the other side of the house.

MS. GANN: I'll accept a motion.

MR. LUNDSTROM: Madam Chairman, I will move that the application by Jose Alemany's request for 14 foot rear yard setback for proposed attached rear deck at 2641 Liberty Ridge in an R-3 zone be approved and allowed to go on to public hearing.

MS. LOCEY: I will second that motion.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MS. GANN	AYE



NORMAN\_VITALE\_(06-12)

---

MS. GANN: Request for 12 ft. front yard setback for proposed addition on a corner lot at 3 Shaw Road in an R-1 zone.

Mr. and Mrs. Norman Vitale appeared before the board for this proposal.

MS. GANN: Please tell us why you're here.

MRS. VITALE: Hello, good evening, my name is Kim Vitale.

MR. VITALE: Norman Vitale. We're here to request a 12 foot variance to create a two story addition of the, off the front of the home, would like to create a 12 x 16 addition which would be a den on the first floor and second story bedroom which will accommodate the size of our family which now includes triplets.

MR. LUNDSTROM: I didn't hear the last part of the comment.

MR. VITALE: To increase the size of the bedrooms which now includes the birth of our triplets, 14 month old triplets, we ran out of room.

MR. LUNDSTROM: I thought there was something significant in that comment, okay.

MS. GANN: This new additional will it be similar in size to other homes in the area? Will it fit in with the other homes in the area?

MR. VITALE: Yes.

MS. GANN: Taking out any substantial vegetation?

MR. VITALE: We had a large number of trees just

removed, there were three walnuts on the corner.

MS. GANN: These here?

MR. VITALE: Yeah, cedar on the side.

MRS. VITALE: It was basically to help the visibility coming around the corner.

MS. LOCEY: Do you anticipate the removal of the trees would cause any drainage or water problems?

MR. VITALE: No.

MS. GANN: Going over any easements that you know of?

MR. VITALE: No.

MS. GANN: Any other questions?

MS. LOCEY: This is a corner lot?

MR. BABCOCK: Yes.

MR. KRIEGER: If it were not a corner lot, would they need to be here?

MR. BABCOCK: Yes, he's actually increasing the corner lot from Shaw Road, his existing house is 16 foot, he's actually going since it's on a diagonal 22 feet away so he's increasing that setback, he could maintain that 16 feet if he wanted to so that's why there's no variance required there.

MS. GANN: Will you be closer to the road than any of your other neighbors, the front of the home will it be any closer?

MR. VITALE: Not on Shaw Road, there is a house further down the street closer to the road.

MR. BABCOCK: It appears that the existing front porch, you know, that sticks out maybe, do you know what size that is, the existing front porch, it's got to be 8, 8 or 10.

MR. VITALE: Wide, I think it's 8.

MR. BABCOCK: Eight feet wide so really they're only going to go out another 4 feet.

MS. LOCEY: So that's coming down?

MR. BABCOCK: No, no, but right now their house, the setback is from the house, they have an existing porch on the house now that I assume was built with the house so they're really were saying they're coming out 12 feet but they're really only coming out 4 feet from the existing front.

MR. LUNDSTROM: Front yard variance is off Bull Road?

MR. BABCOCK: Yes.

MR. LUNDSTROM: So should that motion read requesting a 12 foot front yard variance or should that be amended to include just the difference between the existing porch on what they're proposing?

MR. BABCOCK: No, we're going to do the 12 foot variance so this makes everything no matter it was legal or not it is now cause apparently this house was built before zoning to be 9 foot off Shaw Road, there is no way it was built conforming to any standards.

MR. VITALE: I think 1874.

MR. BABCOCK: So that's--

MR. LUNDSTROM: When I was a young whippersnapper.

March 13, 2006

19

Madam Chairman, I'd like to make a motion then.

MS. GANN: Yes.

MR. LUNDSTROM: That we basically approve the application for Norman Vitale's request for 12 foot front yard setback for proposed addition on a corner lot on 3 Shaw Road in an R-1 zone, section, block and lot 53-3-4 and approve it to go on to public hearing.

MS. LOCEY: I will second that motion.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MS. GANN	AYE

BETTY\_LAWRENCE\_(06-13)

---

MS. GANN: Request for 80 ft. rear yard setback for proposed attached rear deck at 405 Old Forge Hill Road.

Ms. Betty Lawrence appeared before the board for this proposal.

MS. LAWRENCE: My name is Betty Lawrence, currently reside at 405 Forge Hill Road requesting a variance to add a deck to my back yard. I have an existing lower deck I want a raised deck.

MS. LOCEY: So you already have a deck where you want and you want to replace it?

MS. LAWRENCE: I want it out over the dining room, I have one now I go through the basement to get to.

MS. GANN: Looking at these pictures here, where would the dining room be?

MS. LAWRENCE: Dining room is this window over here.

MS. GANN: So you would make a sliding door right there where the window is onto the deck?

MS. LAWRENCE: Yes.

MS. GANN: It would be the same size as the deck that you have here already?

MS. LAWRENCE: I believe it's going to come out further, this is 16, I think he wanted another 20 feet.

MS. GANN: Taking down any substantial vegetation to build the deck?

MS. LAWRENCE: I might take down a tree or two that's in the back yard because I have 4 trees back there.

MS. GANN: So looking at this picture, will it be longer than the home?

MS. LAWRENCE: No, coming down the same side just extending right here, this part is extending.

MS. GANN: Will it be going over any easements that you know of?

MS. LAWRENCE: No, not that I know of.

MS. GANN: Will it be similar in size to other decks that are in your neighborhood?

MS. LAWRENCE: Yes, only one other deck in the neighborhood right now and it's about similar, same size.

MS. GANN: Any other questions?

MR. LUNDSTROM: In the diagram that you provided you're saying her townhouse connects to the property line, is that right on the property line then?

MR. BABCOCK: Yes.

MR. LUNDSTROM: And the deck does not because the property is there the deck doesn't interfere with that?

MR. BABCOCK: No, the property lines go right through the houses, that's how these were built.

MS. LOCEY: When were they built?

MR. BABCOCK: The side yard setback is zero, the requirement in a townhouse situation.

MS. LAWRENCE: She wants to know when it was built?

MS. LOCEY: I mean it pre-existed zoning or something why would there be a zero foot?

MR. BABCOCK: They got a C.O. in 1968 for this unit.

MS. GANN: Any other questions for the board?

MR. LUNDSTROM: Question of Mike, Mike, the application here says requesting an 80 foot rear yard setback, explain that to me on the diagram I'm looking at.

MR. BABCOCK: Yeah, in the back where it says fence and says 20 feet to the fence there the requirement is 100 feet in today's world, probably not when these were built.

MR. LUNDSTROM: That explains it.

MS. GANN: I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Betty Lawrence for an 80 foot rear yard setback for a proposed attached rear deck at 405 Old Forge Hill Road in an R-5 zone.

MR. LUNDSTROM: Madam Chairman, I will second that motion.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MS. GANN	AYE

PUBLIC HEARINGS:

---

EDWARD\_JACOPINO\_(d/b/a\_FARICELLIA'S\_MARKET)\_(06-04)

---

Daniel Bloom, Esq. appeared before the board for this proposal.

MS. GANN: Request for use variance for proposed multi-family/multiple dwelling use (increase in non-conformity); and parking variances for off-street parking of 5 spaces as referred from planning board for site at 238 Walsh Avenue in an R-4 zone.

MR. BLOOM: My name is Dan Bloom and I represent the applicant this evening and with the permission of the chair, I'd like to present the architect representing the application first to give the board just a general idea as to what the site plan would look like and then I'd like to have permission to bring in the certified appraiser to submit a report and then I'd like to once again address the board and perhaps tie things together.

MS. GANN: Sure.

MR. BLOOM: At this point, I'd like to call Joe from Anthony Coppola and Associates, the architect, please.

MR. SANDRIDGE: This is the property for 283 or 238, I'm sorry, Walsh Road, and this is the site plan of where this building is located, currently it is Faricellia's Market and it's right here inside the property and this part of the property also belongs to the owner, there's a deli that occupies the first floor. Can everyone see this okay?

MR. LUNDSTROM: We can.

MS. GANN: We have our own plans up here.



MR. SANDRIDGE: The existing deli in the front part of the building behind it is an apartment, there's an apartment that's off to the side here, a building that's not attached to this and below in the basement area is also another apartment that's existing. The current parking situation is in the rear here and we're proposing to expand that parking based on what we're asking for today. What we're asking for is the addition of two more apartments which will be located over the entire space of this building and the entrance to those apartments will be coming in from the rear. The parking that exists for the deli is all located in the front on Walsh Road and the proposed parking in the rear will be enlarged to 8 spaces. There's an existing building here that we'll be taking down and that will be an easement here on the adjacent property to allow for those 8 spaces. The two apartments will be 1,125 square feet and 1,300 square feet, they will be three bedroom apartments with one bath and this is what that will look like. The existing front facade will stay the same and then it will just be built up from there and the colors will all be done to match pleasingly with the existing front facade. This is the layout apartment 1 here, apartment 2 here.

MS. GANN: Okay.

MR. BLOOM: Thank you, Joe.

MR. LUNDSTROM: Is there anything on the second floor of that structure right now?

MR. SANDRIDGE: No, it's just a flat roof, that roof will come off and this will be built up.

MS. LOCEY: So second floor will be constructed?

MR. SANDRIDGE: That's correct.

MR. LUNDSTROM: And if I understand your presentation

correctly, currently there are two families living in that building?

MR. SANDRIDGE: Yes.

MR. LUNDSTROM: This will increase it from 2 to 4?

MR. SANDRIDGE: In the building, this building then there's also an extra apartment that's off to the side.

MR. LUNDSTROM: Can we go back to the other drawing? Show me again the existing apartments.

MR. SANDRIDGE: There's one existing apartment behind here, comes in about here, it's only a 700 square foot apartment.

MR. LUNDSTROM: On the ground level?

MR. SANDRIDGE: Yeah, that's on the same level as the deli then the other apartment is in the basement underneath this parking here and occupies the back half of the basement. The entry to that apartment is off to the side here and then there's another apartment here.

MR. LUNDSTROM: So there's three existing apartments now going from three to total of five?

MR. SANDRIDGE: That's correct.

MS. GANN: Where is the entrance to get up to the second level?

MR. SANDRIDGE: There's a back porch here and you go up the staircase here and then onto the porch and there will be another staircase that goes up to the second floor.

MS. GANN: And the folks that are on the right-hand side of the apartment number 2, how are they getting in

and out of that location?

MR. SANDRIDGE: There's a sidewalk here that comes back here and connects to the sidewalks back here.

MR. BABCOCK: Now, the new one on the top?

MS. GANN: Yeah, the new one on the top?

MR. LUNDSTROM: Turn the plan over.

MR. SANDRIDGE: Okay, sure, so here's the porch, they would come up this way and then down this way and enter this one and enter this one.

MR. BABCOCK: That would be an interior hallway?

MR. SANDRIDGE: That's correct.

MS. LOCEY: So the covered porch would lead to an interior hallway?

MR. SANDRIDGE: That's correct.

MS. LOCEY: That common is not a deck there?

MR. SANDRIDGE: No, that's all inside the building.

MR. LUNDSTROM: If I may, Madam Chairman, Mike, would you refresh our memory, why is this coming before the zoning board?

MR. BABCOCK: It's a non-conforming use.

MR. LUNDSTROM: Three family apartment?

MR. BABCOCK: Yes, I think they went to the planning board for this, planning board referred them here, it's in an R-4 zone, what's there now is non-conforming, I'm sure, I don't have the dates when it was built, but I'm

sure it's pre-zoning and they want to increase the non-conformity so which requires a zoning board.

MR. LUNDSTROM: Non-conforming being the deli or additional residence or both?

MR. BABCOCK: I think all three right now in an R-4 zone today you're allowed a one-family house, so they've got three apartments and a deli there now, they want to increase it to five apartments and a deli so therefore they're increasing the non-conformity.

MR. LUNDSTROM: Okay, the existing three apartments and deli were built prior to zoning?

MR. BABCOCK: Yes.

MR. LUNDSTROM: Grandfathered in basically non-conforming?

MR. BABCOCK: That's correct, I don't have the dates.

MR. BABCOCK: Would you know when those--

MR. BLOOM: I can.

MS. GANN: We're going to open it up to the public in just one moment, sir, and you can come on up when we're done with all that.

MR. BLOOM: Madam Chairman, may I have permission to check with my client on the age of the building?

MR. LUNDSTROM: Mike, just as a point of information, has the planning board, are they waiting on any action for us to make a decision?

MR. BABCOCK: Yes.

MR. LUNDSTROM: They had preliminary comments on this

project?

MR. BABCOCK: Yes, they have.

MR. LUNDSTROM: Would any of those be beneficial for us to know?

MR. BLOOM: Before the architect retires, any further questions of the architect specifically at this time?

MS. GANN: No.

MR. BLOOM: All right, thank you very much. May I call, Madam Chair, Eldred Carhart, he's a certified appraiser, he's done an appraisal of the property. I'd like to have him present a report to the board members and to be available to answer any specific questions you may have. He's done an analysis of the income of the property, the value of the property and the projected increase in income through the construction of these two units and that will be relevant when I submit and I will submit copies of a report from the accountant of my client along with their tax returns justifying this application in terms of the economic issue. Mr. Eldred Carhart, please.

MR. CARHART: Good evening, I have copies of the report. Before we get reading this report, I wonder if I can make point. I have a little additional testimony to give. I don't feel that the granting of this variance would reduce the property values of anybody else in the area. If anything, I think it would just enhance the values of the property by virtue of the fact that the building would all be fixed up and looking like new. Now the, I'm sorry I didn't even qualify myself, I am Eldred Carhart, I'm a certified general appraiser in business for over 35 years, most of you at least know my name and I'm licensed in Connecticut and New York. My qualifications are attached to the back of the presentation and I wondered

if you would just take a moment, look over the presentation and then if you have any questions, I will be happy to answer them. I hate to just read everything that you've already got in front of you.

MS. GANN: Can you just give us a summary, there's a lot here to read, obviously, can you just go over maybe the main points of what you're looking to do here?

MR. CARHART: Point one is that it will not alter the essential character of the neighborhood, it's a very mixed use neighborhood with commercial and residential properties now, it will not effect that usage. I have given financial reasons why this variance should be granted and those are quite, those are the bulk of the analysis. They would deny if you do not grant the variance it would deny the reasonable return on the property. The property now is assessed, value is \$375,000, when you take the net operating income of \$26,130 and divide that by 10% which is the capitalization rate, the value comes in at 261,300, which is \$100,000 less than it's being taxed on. However, with the additional apartments, that's only 7 percent return, 6.97, but if the apartments are added, the net operating income would be increased to 44,510 which is a 10% return on the investment and that's much more reasonable, actually, it separates it from being denying a reasonable return on the investment and offering it the property and this is a summary of what I wanted to say.

MS. GANN: Okay, thank you.

MR. CARHART: I'm here to answer any questions you may have.

MR. LUNDSTROM: Just one question I have, you're saying that if the Zoning Board of Appeals denies this it would basically deny reasonable return on the building, you're saying it's not profitable as it is now with

three apartments.

MR. CARHART: It's not profitable at all, tax wise, in fact, it's \$100,000 less than it's being assessed for, the value of the building is \$100,000 less than the property is assessed for.

MR. LUNDSTROM: All right, how does that relate to a return on investment?

MR. CARHART: Well, that's a 6.7 percent or 6.97 percent return on the investment, whereas, if you increase, if you allow it to be increased, the number of units it will make it a 10% return on the investment.

MR. LUNDSTROM: What is the return on investment of the other properties in the area?

MR. CARHART: I don't know what the others are cause I haven't analyzed those, but the capitalization rate is generally about 10% and so whatever that operating income in it depends on how much the rents are, whether they're economic rents, whether they're fair rents and what the expenses of the property would calculate to be.

MR. LUNDSTROM: Okay, cause the other question along that line would be the rents for the apartments that you have on page 2 of the presentation, are they fair?

MR. CARHART: They're all fair rents, yes.

MR. LUNDSTROM: Should they be increased, would that improve?

MR. CARHART: The tenants have been long term tenants and they really the owners have not applied actual market rents to them but they're very close to market rents now so they don't want to rock the boat and lose

a tenant and then have to suffer higher vacancy allowances so it's a kind of a trade-off to them, the rents for the owner's store and the owner's apartment these are fair market rents, these are the rents that I applied, there are market rents.

MR. LUNDSTROM: Okay.

MS. GANN: How long have the apartments been there as well, the deli and everything, was everything built at the same time?

MR. CARHART: My records say 1964 was the effective age of the property but I don't, really, the assessor lots of times says that its effective age is not the actual age but it's been a market as long as I can remember and I'm a Newburgh native and it's always been two apartments, three apartments, excuse me, and the market, I can't remember it being anything else.

MR. LUNDSTROM: One of the questions I have we can go back to the architect on the other side of that form you're showing parking areas would go onto a neighbor's property?

MR. SANDRIDGE: That's correct, they're in contact with that neighbor and have an agreement, an easement to allow for that parking.

MR. BLOOM: If I may address that particular question, I was going to present the board, I will do this now if I may just hand up, I have a written offer of easement from the next door neighbor, Mr. Michael Faricellia which would provide the necessary area for the parking that we seek the variance for.

MS. GANN: This just states that this individual will permit a 12 foot common use permanent easement and allow the easement to be recorded with his deed?



March 13, 2006

32

MR. BLOOM: That's correct, in other words, he's agreed to grant a permanent easement, in other words, a right to use this parking as we say in the law would run with title to the land so as long as it's associated with this particular deed in perpetuity it would be a right to park.

MS. GANN: How much property again is that, is that going over to this other person's area, how much land are we talking about?

MR. BLOOM: Would you delineate that please, Joe?

MR. SANDRIDGE: Yes, that would be this portion here, 12 feet back and 72 feet long.

MS. LOCEY: Where is the property line?

MR. SANDRIDGE: Property line is this dark line here.

MS. GANN: What's there now?

MR. SANDRIDGE: Currently, there's two parking spots here and then a carport up here and the rest is just lawn and sidewalk.

MS. LOCEY: And the neighbor's property?

MR. SANDRIDGE: That's all just grass and there's a metal shed here.

MS. LOCEY: Which will be removed?

MR. SANDRIDGE: That's correct.

MR. LUNDSTROM: Is there a dwelling on the neighbor's property also anywhere on that parcel of land?

MR. SANDRIDGE: Yes but I'm not exactly sure where it's located.

MS. GANN: Is it close to this area that you're looking to get additional parking spaces from?

MR. SANDRIDGE: No, I believe it's, I don't think this obstructs any dwelling that's there.

MS. GANN: You're not a hundred percent sure that it's close to a house or dwelling?

MR. SANDRIDGE: No, I am not a hundred percent sure, I didn't have it shown on this site plan so I'm not sure where it is exactly.

MR. BLOOM: In terms of answering that question if I may I can produce at a point appropriate in the hearing the next door neighbor who owns the property who can locate it for you, Mr. Faricellia.

MS. GANN: Take pictures of the area?

MR. BLOOM: Yes, I have pictures.

MR. LUNDSTROM: Now, have I been informed correctly, this project is also before the planning board?

MR. BLOOM: It was referred here from the planning board for site plan for a variance in terms of the parking as well as for a, what we call a use variance because we're increasing the non-conforming use.

MR. LUNDSTROM: Basically on two counts, one is the parking, the other one is on the non-conforming going from three to five?

MR. BLOOM: That's correct, if this board acts favorably on the application, then it's back to the planning board. If this board does not act favorably on the application then it's pretty much the end of it.

MS. GANN: Now the deli's parking lot spaces, what will they be used for and who will be parking in these locations?

MR. SANDRIDGE: These, all these parking spots will be for all the tenants of the apartments.

MS. GANN: Tenants only?

MR. SANDRIDGE: That's correct.

MR. LUNDSTROM: Madam Chairman, may I ask the ZBA attorney if it would be admissible to understand what the planning board may have felt about this or is that just not appropriate here?

MR. KRIEGER: You can ask to whatever extent it's available.

MR. BABCOCK: There's minutes that were sent over, I gave you a copy of the minutes from the planning board, I mean, you really have to read the whole thing to get the gist of it because the planning board was not happy about the, I shouldn't say the planning board, they actually they said that they will refer to the zoning board with a negative recommendation from this board that was the Chairman of the Planning Board at the time.

MS. GANN: That's for parking, Mike?

MR. BABCOCK: Well, I think it was for the entire thing, I think the gist of the board was is that there is a lot on one piece of property, there's an awful lot there, you really have to read the minutes to get a feel for it yourself, it's a 9,000 square foot lot, they say there's three apartments and a dwelling there now and they said if you're successful in getting the use variances, they can come back to the board and they'll take another look at it.

MR. LUNDSTROM: This is an interesting quagmire.

MS. LOCEY: What's conforming in an R-4 zone?

MR. BABCOCK: A one-family dwelling and/or what they have there now because it's non-conforming.

MS. LOCEY: Correct but in order for it to conform, it would have to have just a single-family home on that piece of property to conform with today's zoning?

MR. BABCOCK: That's correct.

MS. LOCEY: So they're already non-conforming?

MR. BABCOCK: That's correct and they want to increase the non-conformity, that's why we're saying they need a use variance and then based on the increased non-conformity the law says you have to have so many parking spaces for the deli, so many for each apartment and they're going to be five short, I believe it's five.

MS. LOCEY: Yes, I saw that.

MR. LUNDSTROM: Madam Chairwoman, just one question for Mike. Hypothetically, if the Zoning Board says yes, goes back to the planning board, will the planning board then hold another public hearing and they would have the right to say no?

MR. BABCOCK: The planning board has a right to waive a public hearing on this and/or have a public hearing so it is up to their discretion, I think they didn't have a public hearing cause they know they'd have a public hearing here, that's what's here tonight, once the applicant's made their proposal, we have to open up to the public and hear the public comment.

MR. KRIEGER: Perhaps it would be useful if at this point if I explain. The purpose of the Zoning Board of Appeals and of the planning board are two separate purposes. If the variances that are sought here are granted and it goes back for site plan review, then the planning board takes it the way they get it at that point and they review site plan which in essence means they make sure that to the extent possible things are located where they ought to be located. They do not have the legal capacity it say no, you can't do it, that's up to this board. So when you say, when they say no, it's hard to say they have the right to say no to a particular site plan, well, that doesn't accomplish all the things that you need to accomplish but they don't, can't say no, you can't use the building for that purpose at all, that's this board's function. And when you said another public hearing, it's not normal practice that they would have a public hearing of any kind before sending it here, this is the first public they're going to see, that has occurred. Now in connection with the site plan review if the planning board were to conduct it, they may or may not have a public hearing, they would but they have the right to waive it so they would or not depending on how they viewed it and the members of the planning board viewed it at that point but it is customary with the planning board that they'll often, they certainly would rely on and want to know what the public hearing was, the experience was here in front of this board before they decide whether to waive their own or not and I have seen them waive and I have seen them not waive but it is so, when you say another public hearing, understand this is the first public hearing that's ever occurred on this process and the only public hearing that will occur of necessity, in other words, guaranteed to occur, there may or may not be another one.

MS. LOCEY: Why did the application go to the planning board prior to coming here?

MR. KRIEGER: That's the normal practice, when a applicant requires, is going to require planning board approval and an application will eventually require planning board approval, they start there, if the planning board finds on their initial review that there are zoning questions that they do not comply with the zoning it will as it did here refer the matter to the, to this board for its approval or not before proceeding further. If this board approves the application then it would go back to the planning board and it would pick up with the planning board review process but normally the application is made where there is a site plan that's going to be necessary according to our local statute to make the application therefore it's referred over.

MR. BABCOCK: Kathleen, one and two family dwellings, the building department refers it to this board, anything three family or more it's a planning board function or a commercial establishment. So they went to the planning board, the planning board determined what variances they need and then sent them here for relief of the variances to go back to the planning board. Once they go back to the planning board, if they're successful tonight, they go back with a plan that meets the zoning because you've given the variances for the amount of parking, you've given them variances to have the two more additional apartments so now the plan meets the zoning and the planning board may say the parking needs to be shuffled over here, how are you going to turn around here, you know, is the garbage dumpster in the way or whatever, basically not yes or no but just how it's laid out.

MR. LUNDSTROM: So basically the first part of my question is if we say yes, it goes there, if we say no, the process ends here?

MR. BABCOCK: That's correct.

MR. LUNDSTROM: I have one further question. If the ZBA approves this, will that be setting a precedent?

MR. KRIEGER: There are basically in zoning there are no precedents because each property is considered in the eyes of the law to be unique, so you can't simply apply the decision that was made for Property A automatically for Property B because in the eyes of the law there are two separate however identical they may appear there are two separate instances. So the first answer to your question as a general rule is no, where there's, where the Zoning Board of Appeals has been held to account for precedent if you will is basically in procedure, they can't, even though properties as I indicated are different, the Zoning Board of Appeals cannot apply a different, any given Zoning Board of Appeals, I'm not talking about this one, cannot apply different standards to different properties. The standard has to be the same, the answers may be different and they may be and the answers are individual but the questions have to be the same. And to that end and I don't know whether the chairman would like me to go into this in detail now or as I was going to ask him to at the end of the presentation but the state law sets forth criteria that are question, question that must be answered with respect to the use variance, some of those criteria have been and I see by specific language have been, have appeared in Mr. Carhart's report, the reason I wasn't going to go through it in detail at this point is the statutory criteria are as well known to counsel as they are to me and I assume in his presentation it was going to, he's going to address them to the extent that he deems necessary. I don't want to go into any particular detail with respect to the criteria until after they've had a chance to make their presentation but before the board votes, I will be happy to go over those.

MR. BLOOM: Thank you. Madam Chairman, before

proceeding on, may I call Michael Faricellia before the board for the purpose of locating that house, he owns the house, the adjacent house to answer that specific question? Mike, would you please come up and locate on the diagram the approximate location of the adjacent house vis-a-vis that parking area?

MR. FARICELLIA: Right here.

MR. BLOOM: If I may for the record, Mr. Faricellia is indicating that the house is located in the upper left quadrant of the building lot that's adjacent to the parking area that's proposed. Is that correct, Mike?

MR. FARICELLIA: Yes.

MS. GANN: You said you didn't live in that home?

MR. FARICELLIA: No, I don't live there now.

MS. GANN: So we don't know the exact footage that's from this parking area to the next dwelling?

MR. BLOOM: I don't know the exact, now, I do not.

MS. GANN: Okay.

MR. BLOOM: If it pleases the board, I'd like to try to summarize what's been said and add to it and try to place it in context, if I may. First of all, as you know, my clients, Mr. and Mrs. Jacopino have operated this Faricellia's Market we call it because it was a the Faricellia Market, they bought it from the Faricellias and they have continued it and they have been operating this market since they purchased it in 1968, they have actually been living downstairs in the downstairs apartment, one bedroom apartment for 19 years. And they have been operating it for that period of time. They have enjoyed operating it and I respectfully submit that they served a legitimate and a



wonderful function in that community, a very mixed neighborhood as we all know, we have manufacturing, we have retail, we have wholesale and yet everybody has to eat and everybody has to buy groceries and they were there for that purpose. Unfortunately a few years back particularly probably around year 2000 they opened a new convenient market at the corner in the City of Newburgh on the corner of South Williams Street and Lake Street and immediately there was a dramatic drop in the gross income of the Faracellia's Market. And then shortly thereafter they opened up an Exxon, an Exxon opened up another convenient market on the other end of, on 9W, so effectively, what happened is when they opened up the market on South William was that all those people in the Bourne Apartments who would walk over to this market walked across the street for obvious reasons and they lost that business. And then when Exxon opened up the market on 9W, all the people that would cross 9W and come over and purchase their groceries from the other side of the 9W they stopped walking across 9W, understandably. And the bottom line is that as a result of that, my client's income has dropped dramatically over that period of time and specifically I'd like permission to hand up a report from Eileen Karney, the accountant for my clients and just quickly summarize if I may, Madam Chairman. Mr. and Mrs. Jacopino's business as Faricellia's Market throughout the 1990's and first part of 2000 were consistent, their growth and their income was consistent of approximately 3 percent a year. By the end of 2001, sales had fallen 10.5 percent, by the end of 2004, 36.5 percent, from historic average, 2003, 2004 showed a steep decline of 21.5 percent and the recent competition from the surrounding stores is the basic cause. So if I may pass up a few copies of that.

MS. GANN: Thank you.

MR. BLOOM: In addition and in support of that, I also would like to hand up to the board copies of the actual

tax returns themselves that were filed for the years 2001 through 2004 substantiating the allegations made in the report from the accountant. So nevertheless my clients continue, this was their sole source of income, this is how they raised their family, they continue, they try, they continue to try to make a living but it reached the point when they realized they could no longer make a living doing this so they tried to sell the property for three years they tried to market it with three different local real estate agents with absolutely no takers because you can't sell something like that that's losing money at that rate. So then finally they thought about the idea of raising the income through the addition of the apartments upstairs and if they could do that, they could remain in business and that's fairly substantiated in the report from Mr. Carhart when tied in conjunction with the report from the accountant. Now, one might say and it certainly is a legitimate observation, say that's capitalism and that's society and some people make it and some don't and a lot of people work hard and still don't make it and we all understand that. But I suggest to this board that the Jacopinos are filling a unique need in this community, they are in my opinion one of the only, perhaps the only store that I am aware of that extends credit to their customers weekly, monthly, the people that work in the Federal Block across the street come in and buy their sandwiches and groceries during the week and they go paycheck to paycheck. My clients extend them credit and they may have to pay at the even of the week. They have elderly citizens that come in, buy there groceries and have to wait 30 days until the next Social Security check and my clients extend credit. Last time, I'm old enough to know that, last time I ever, Firthcliff Carpet was extending credit to their employees and that goes back a long time, so I suggest that they're fulfilling a need in this community and they're not doing it in a way that's causing a disturbance in the community. This is a mixed community, drove down here just

yesterday just to refresh my recollection, I don't think there's a single building in there that conforms, I think they all are non-conforming and non-conforming I might suggest in the same manner which my client's property is non-conforming. In support of the particular unique function that my clients serve, I asked them to prepare two petitions for me and asked their customers and their neighbors to sign them and with permission of the chair, I'd like to just read the introductory statements and then hand them up.

MS. GANN: Okay.

MR. BLOOM: First one says the undersigned being neighbors of Faricellia's Market, 238 Walsh Avenue, hereby express our support for their application for variances and site plan approval to expand their building to include residential apartments on the second floor and then there are three sheets attached, I'm going to ask that they're made part of the record, probably over 25 or 30 signatures per page. And then the next petition reads, the undersigned being customers of Faricellia's Market hereby express our support for their pending applications to the board for necessary variances and site plan approval to continue their market and business through the construction of residential units on a second floor to be added to the existing building. We support the application because Mr. and Mrs. Jacopino extend credit to us in purchasing our necessary grocery needs. No other market in the area provides such a vital service. And again, three sheets of approximately 30 signatures per page. If I may, Madam Chair, I'd like to hand those up.

MS. GANN: Thank you.

MR. BLOOM: I indicated that in my opinion I didn't think that what they are proposing to do my clients would be inconsistent with the existing consistency of the neighborhood and in support of that, Madam Chair,

I'd like to hand up at this point photographs of the surrounding buildings in the community, if I may. And after reviewing those photographs of the surrounding community, I'd also like to respectfully hand up two photographs, one of the Exxon Station on Walsh Avenue and South Williams Street, Lake Street and the other of the Exxon on 9W and you will see why there is no question that consumers in the vicinity of these stores would be much more inclined to walk to these stores and purchase their groceries, they're beautiful, they're well stocked and they're closer to those individuals. My clients as I have said have lived there for over 19 years in a one bedroom apartment in the basement and run this business above their apartment. They now have two grandchildren and they'd like to be able to move to one of the upstairs apartments so that when the grandchildren visit, they have an extra apartment for them to sleep. They have done nothing to cause this particular concern or application for variance or hardship to cause the hardship themselves, they simply paid their money, they paid for the property, they put their sweat and blood into running the business and raising their family and now all they're asking is the opportunity to continue to serve the community and make a decent living and do it in a way which I respectfully submit to this board would be consistent with the values of the surrounding community. I also submit as indicated by Mr. Carhart that this addition if permitted by this board will do nothing but enhance, increase the values of the surrounding properties. I hope I've covered all of the points, all the points necessary for this board to render a decision, but to the extent that this board or counsel may feel that something is missing, I respectfully invite the opportunity to address whatever those issues may be. Thank you.

MS. GANN: Thank you. Any other questions from the board?

MR. LUNDSTROM: One question, Madam Chairman, in order to grant approval for this, does it require a simple majority of the members present or is there a fixed number?

MR. KRIEGER: No, it only requires a majority of vote because it does not require a super majority cause it's not within the criteria where it had to be referred to the County Planning Department that would be the only requirement for super majority, had an application had to be referred there and had it been returned with a negative recommendation by the County this doesn't have anything to do with the planning board here. Had that been the case then there would be a super majority requirement but that's not the case here. However, having said that, I want to say that it's a majority of the board, not a majority of the board present, that means that in this particular application there only being three members present all three would have to vote in favor of it. If anyone votes not in favor of it, the application is deemed denied. All three who are here must vote in favor cause this constitutes a majority of the five person board.

MR. LUNDSTROM: That was my question. Thank you.

MS. GANN: At this time, I'd like to open up this public hearing to the public, obviously, and please come up one at a time and please state your name loud and clear and you're either for or against it and please say it loud enough so the young lady can hear you. So please?

MR. SMITH: Everett Smith. I made some notes while I was listening to all the conversations, I can't read my own handwriting so bear with me. First thing I'm concerned about one of the reasons I came down here tonight was because we're talking about an independent business, my business, in my business we deal with independent businesses for the most part, hundreds of

them, very, very difficult for these people to stay in business today and I think it's very important, very important for government and anyone else to support these businesses and do everything that they can to keep them in business. Good reasons came out tonight, one of the them being service, talked about credit, I have been in that store many, many times, I've seen credit given to people that I would think twice about giving credit to but they write it in a book, they give them credit. There was woman a few blocks away who had terminal cancer, I know that she couldn't get out of the house, she couldn't get her cigarettes and some other things and they delivered them to her. You're not going to find many of these Exxon stores or places that are going to do that. Faricellias did that to more than just that person. Service is very important, independent business is very important, service is something that the independent business is going to do. Got to support these people. And one of the things I just cannot get over and I don't know where the heck it came from but it's an R-1 zoning for Walsh Avenue, if you've been down Walsh Avenue, it's ridiculous, Federal Block on one side of the road, Patrillo's, Dryers, you name it, I don't know of very many single family dwellings on Walsh Avenue and yet it's R-1, talk about conforming, nothing conforms, I don't understand it. We're going to be having a master plan coming up soon, hopefully that's changed but right now I don't see conforming as being an issue. Nobody conforms, it just didn't exist before and it doesn't exist now and whatever you do isn't going to change that. You have to support these independent businesses, there are businesses there right now that are two stories high, they have apartments there, there are houses that have, that are two and three stories high that have more than two or three apartments in them, so there's nothing that these people are asking for that doesn't already exist in that area. And my concern again is for an independent business, I want to see them stay there, I want to see them continue the service that they're

giving to that area and I want to see them stay in business and I would ask for your support.

MS. GANN: Thank you. Anyone else?

MR. BUCCI: Rich Bucci, 2 Myrtle Avenue.

MS. GANN: Okay.

MR. BUCCI: I'm concerned about the parking, parking and snow removal and the traffic, okay, now I live on the corner of Myrtle and Clancy directly behind proposed parking lot which you said there's going to be they need more parking, where are they going to get that from, my property?

MS. LOCEY: No, I think they're looking to expand up.

MR. BUCCI: Right now there's trees over there.

MS. GANN: Mr. Architect?

MR. BUCCI: Cause right now they're pushing the snow from their driveway over into my side into my part of the road.

MR. SANDRIDGE: This is where the parking is going to be.

MS. LOCEY: Where is the existing parking?

MR. SANDRIDGE: It's currently right back here and then--

MS. LOCEY: Towards Clancy?

MR. SANDRIDGE: That's correct and then the easement here and there are trees there that will have to be removed.

MR. LUNDSTROM: Rich, I'm sorry, you're going to have to move.

MR. SANDRIDGE: Existing parking is back here and the easement's here and there are trees here that will be taken away.

MS. GANN: Can I stop you for one second? Is there anyone else that's concerned about the parking? If you want to come on up while he's demonstrating this I think that would be helpful.

MS. DEYO: I'm Sherry Deyo.

MR. LUNDSTROM: And the gentleman?

MR. DAMARAO: Carmen Damarao, 40 Clancy Avenue, I adjoin the back lot of the store.

MR. LUNDSTROM: Just for the record.

MR. LUNDSTROM: Have the three of you had an opportunity to review the map?

MS. DEYO: I don't understand the map, I mean, I don't see where Myrtle Avenue is but anyways thing is they're making it sound like it's commercial but on Walsh Avenue, yes, it is all commercial there, the laundromat and everything, but in the back of it where we live it's all residential and we have grandchildren too, you know, and from what I'm gathering the spaces are going to be right across the street from our yard I'm not, the map does not show that but the map does not show that.

MS. GANN: Is that correct?

MR. BLOOM: The spaces from what I can gather, yes, the parking I believe what you're saying is that your, is that you live across the street over here, is that



correct?

MS. LOCEY: They need to know where Myrtle is.

MR. BLOOM: Clancy is here, I mean, as you look at the property you're over here, is that correct?

MS. DEYO: Okay, we would be here.

MR. BLOOM: The parking spaces would be here and they would be right behind the residential portion of the building.

MS. DEYO: But--

MR. BUCCI: My house is right over here.

MR. BLOOM: That's correct.

MR. BUCCI: So the traffic would be going--

MR. BLOOM: Right now they have parking there now just that they have parking for two cars what they're proposing is this, that's correct, this gentleman lives across the street.

MS. LOCEY: So you're directly across from the existing parking now?

MR. BUCCI: Correct.

MS. GANN: They're just going to be expanding that.

MR. BUCCI: Expanding it how, how many apartments, there's five times two, 10 parking places, where are they going to get it from in the back?

MS. LOCEY: How do they access the parking?

MR. BLOOM: Parking is actually accessed from Clancy.

MR. BUCCI: Well--

MR. DAMARAO: I believe the property is 30 foot wide.

MR. BLOOM: Yes, that's correct. But with the additional easement it gives the easement would extend up this 12 foot strip here and it's been through the, they came up with the determination that based upon square footage with the easement that we need a variance for five spaces.

MR. DAMARAO: Now, another question I'd like to ask they have how many rentals now?

MR. BLOOM: Right now we have three, well, three in the sense that they live downstairs, they rent this on the side.

MR. DAMARAO: There's three?

MR. BLOOM: That's correct.

MR. DAMARAO: You know I live right here at the present time, my wife and I, we've got three vehicles, how many do you have?

MR. BUCCI: We've got three.

MR. DAMARAO: Next house down they have four then this little cottage here single fella has two pickup trucks and in 1963 I got sick and I was parked in front of my house, the ambulance had to block the road in order to go through, I mean, chairman and board members, do you know this part of town?

MS. GANN: Yes.

MR. LUNDSTROM: Yes.

MR. DAMARAO: It's congested, the streets are narrow, we have a problem snow plowing in the wintertime, drainage problems and if I can go back a little bit in 1955 I had an idea, I put up a building that sits here, 240 Walsh Avenue, I put oversized heavy duty eye-beams 21 inches and at a future time I wanted to put a second story up, that was 1955 before zoning, before anything, in fact, before a good seven years before Faricellia's store. By '67, I rented it out at first for just auto storage but in '57 I rented out to Case Laundry, by that time like was mentioned Federal Block came all the way up, Crudeli's at the time started banquets and parties and when I rented it to Case Laundry they had 8 workers and even at that time there was no parking. So I stressed the idea of the second story, I bought property on Cedar Avenue, put up a building the same size that was in '57, can you imagine the congestion there now? Now, I don't begrudge anybody making a living, we're all trying to make a living.

MS. GANN: So are you for or against it, sir, just for the record?

MR. DAMARAO: Well, from what I see in the plan there I don't understand where they're going to put all these cars for one thing and snow plowing in the wintertime and all kinds of things, I mean right now neighbors are throwing snow on the other neighbors' yards, excuse me, I didn't mean you do it, but it was easy to push it with the plow.

MS. LOCEY: We do need to know for the record if you are for or against the application.

MR. DAMARAO: Well, the way it stands this way I'm against it, yes.

MR. BUCCI: I'm against it too and according to these plans.

MR. DAMARAO: It's a nice plan, everybody did wonderful homework, wonderful.

MS. GANN: So is it just the parking that's the issue for all of you?

MS. DEYO: Yes and traffic.

MR. BUCCI: And traffic in the back where the residential area is.

MS. GANN: Thank you. Anyone else here for the public hearing?

MS. BLYTHE: Myra Rumsey Blythe and I own a four family at 276 Walsh Road, I own 267 Walsh Road, I own 7 High Street, 34 Melrose, three-family home, 23 Leggard, three-family home, and I as of last year I own 277 Walsh Road, all of which is within maybe a block to two blocks from where this structure is going. I want to start out by saying I am in favor of this because I have a 13 and 15 year old, I grew up a block from this place, went to Faficellia's my entire life and it's wonderful to have a place where you can get a cup of coffee in the morning before you go to work, a place where I can let my kids walk on the street in Ducktown, not go to the City of Newburgh in order to get a soda or sandwich. And I really think it's a loss to our community in Ducktown to put these people under this pressure financially if they have to close because this is really all we have. And the properties I have just mentioned to you none of them conform to the R-1 zoning and my properties go back probably to the pre-zoning, some of them after zoning and we all have learned to live together in Ducktown with the snow removal, with the problems that we have there, good neighbors that help each other when there's a snow removal problem and that's what we've done on Melrose Avenue cause I have a multi-family house there where snow removal has always been a problem living across from like senior women who

have no husbands or grandchildren around to remove the snow, so we get out and we help each other, that's how I think they can take care of their problems here. If the community comes together and allows these people to build this then the people are going to come together, they're not going to throw snow on each others' property because that's your neighbor and that's your community and this is really what you want to preserve in Ducktown and we need place like that for the families that still are there. I have never asked them for credit, by the way, I always pay when I go in cause I want them to stay there also. However, this is so important to some of the older people that we have in Ducktown, the people that I grew up with, my aunt Siminowski (phonetic) who's in her 80's she lives on Melrose, that's a place where you can go in a pinch, we really need this, we're not going to go to these other stores like the Exxons and the places up passed the apartments because we stay in Ducktown, that's where I grew up that's where I'm moving back to in a matter of like a month because I'm building a house someplace else so I'm moving into one of my apartments, that's where I'm going to be with my children. And I really hope that you approve this project so that we can keep Faricellia's in Ducktown.

MR. BLYTHE: I'm Mike Blythe, I'm Myra's husband and I know Ed and Ellen from quite a few years and Myra's right, that Ducktown is sort of a unique area of New Windsor, it's, I always kid everyone that you can take the girl out of Ducktown but you can't take the Ducktown out of the girl, when it comes to Myra and where, and the way she describes the community, it's very, very accurate, you have to move your car, let the snow plows come through, but certainly this board can grant a variance, would be in a position to grant the variance, let the planning board deal with the parking in Ducktown because that's probably the best way to handle it. And then when if they're going to change something on the site plan or require something else

March 13, 2006

53

then address the parking issue but certainly you don't want to say that's improper with regard to the zoning. Ducktown, I have to echo Mr. Smith's comments that there's nothing that conforms in Ducktown.

MRS. BLYTHE: Nothing conforms to Ducktown.

MR. BLYTHE: There are three families, there's, well, it's a four family across from the firehouse next to a single family next to a deli next to Federal Block next to a funeral parlor, as you go through there and if you go back as these folks here said a lot of it is residential but a lot of it is The Sentinel, it's three-family houses, there's the Legion Hall back in there, there's the daycare, Little Harvard I think is the name of it or whatever the daycare is, it's such a mixed use area, certainly to deprive Ed and Ellen of being able to make a reasonable living there is something that you don't want to do and really you get to a point where if there's no reasonable return on the investment you're going to drive something like that out of Ducktown and that I don't think anybody really wants to do that.

MS. GANN: Thank you. Anyone else here? Come on up, sir.

MR. FLYNN: Arthur Flynn, I own three properties on Walsh, 216, 221 and 229, one's residential two are commercial, I'm also the person who just recently purchased the Thomson property trailer park, the shop which was a work in progress, I'm for what Ed and Ellen want to do, I think that as everybody knows mixed use on that street, some of us like myself are anxious to try and clean up the area, make it look nicer, I think what they're going to do not only will benefit them financially and clean up there if they do a nice job and I'm sure that the parking situation can be worked out and it is tight over there for sure on all those streets but it is a great group of people in Ducktown

so I'm in favor.

MS. GANN: Thank you. Anyone else?

MS. DEMATO: Victoria DeMato, I work for the wholesale grocery company that sells to all three of the stores, the two Exxon stations and Faricellia's, I'm here to attest that their business has gone down dramatically over the last five years, by selling to the other stores I see their businesses go up and Faricellia's is going down and Ellen and Ed are great people and they contribute a lot to the community and I have sold to them for about 15 years and I'm for what they're going to do here.

MS. GANN: Thank you.

MR. ZAMEC: My name is Robert Zamec (phonetic), 254 Walsh Road, just down the street from the deli. When the approval went through for the funeral home there was not supposed to be any parking on or any funerals taking place at that time and when they do have funerals at night it congests the entire street up and we have just lived in a community and dealt with it, you know, I mean, everybody, a lot of people park on what we consider sidewalks because there are no sidewalks in Ducktown, I'm all for it.

MS. GANN: Anyone else?

MR. BRIGHTON: My name is Billy Brighton, Jr., I live at 325 Walsh Avenue. Unfortunately, I don't own any property but I am one of the people that he probably wouldn't give credit to. I have been going there for the past 18, 19 years, they do extend me credit, they help me and my family out, so I just hope that you will help them out. Thank you.

MS. GANN: Anyone else? I'm going to close the public hearing then I'm going to ask Myra how many mailings we

had.

MS. MASON: On February 21, we mailed out 77 envelopes and had no response back.

MR. KRIEGER: If I may, Madam Chairman, because this is a use variance, it will first be necessary for the board to fulfill its obligations under the State Environmental Quality Control Act which means that while I first suggest that you may wish to declare this to be an unlisted action under the SEQRA law and then you have to decide whether to grant a negative declaration or a positive declaration. Negative declaration meaning that it has no, this application has no environmental impact, positive declaration meaning either that it does or that it may. If this board declares a negative dec then you're finished with the SEQRA process and you may proceed to consider the variance request. I will talk, Madam Chairman, with your permission I will talk in a minute about the four criteria necessary by statute to grant a use variance but I think it would be useful for me to do that after you act on the SEQRA matter because I may be providing more information than is necessary to try and absorb at one point. So one resolution declaring that this is an unlisted action and if that's, if it's your desire declaring a negative declaration or declaring it's unlisted and declaring a positive dec, whichever you prefer.

MS. LOCEY: I will offer a motion regarding the application of Edward Jacopino to declare, to make that application an unlisted action as far as SEQRA requirements and to make a negative declaration.

MR. LUNDSTROM: I will second that motion.

ROLL CALL

MR. LUNDSTROM            AYE



MS. LOCEY                    AYE  
MS. GANN                    AYE

MR. KRIEGER: You have now completed your obligations under the SEQRA requirement. In order to grant a use variance, there are four criteria, four factors which must be considered and each one of the four must be satisfied. Three out of four isn't good enough, has to be four out of four. The first factor is the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent, financial evidence. The second criteria that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. Three, that the required use variance if granted will not alter the essential character of the neighborhood and four, that the alleged hardship has not been self-created. You may notice in the report that has been given to you by Mr. Carhart some of the same language is that which I just quoted, presumably Mr. Carhart can read the statute as well as I can. That's where the language comes from. If you find that the use variance request fulfills all four of those criteria then you may vote to grant the use variance. If it fails in any one in your view then you must vote negatively with respect to the application.

MR. LUNDSTROM: Would you review those four again?

MR. KRIEGER: One, the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent, financial evidence. Two, that, if I mischaracterize the applicant's position, I'm sure they'll correct me, I think if it has been the applicant's offering the reason for Mr. Carhart's testimony has to do with the fulfilling the requirements, first of all, fulfilling requirements in question one. He touches on other criteria that you may see for yourself as you read the

report. Two, that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. Three, that the required use variance if granted will not alter the essential character of the neighborhood and four that the alleged hardship has not been self-created. Those are the four.

MS. LOCEY: I think the financial reports that were submitted more than adequately indicate that reasonable return cannot be met under the current situation.

MR. KRIEGER: I might comment on that just so that you understand reasonable return does not necessarily mean a profit, that's why the applicant has gone to some effort to show that this return is substantially below the profit level because that's not the criteria. The property doesn't make a profit, the criteria is that it has the, it does not produce a reasonable return to a certain extent reasonable, ability of a return is within your discretion, but whether it's some evidence of any return at all, it is as I say it is within your discretion but merely showing the property does not make a profit doesn't satisfy that criteria. That has not been the applicant's position in the, this application, they have not limited themselves to the question of, mere question of profitability.

MS. GANN: So would it make sense then to have the two bedrooms, I'm sorry, to have the two apartments rather than just having one, I mean, is it really essential that they have the two apartments added to this?

MR. BLOOM: If I may address it is respectfully Madam Chair because without that income they can't generate enough income to stay there, that's the problem.

MS. LOCEY: Well, reasonable return is considered about 10%, is that right?

MR. KRIEGER: Well, it's within your discretion, it's determined that there's no hard and fast rule you're certainly entitled to listen to the expert witness that they have produced and he will talk about industry standard, has talked about industry standard which is some gauge of reasonableness, maybe some gauge in your mind, it is not as we say dispositive of the question, in other words, you're not obligated to go along with the industry standard merely because it's an industry standard but if it's offered as a standard and you decide not to go along with it you must have, it must be the product of some reasoning, you can't just--

MS. LOCEY: Well, if the business is not financially profitable and is at this point I think their financial records indicated a return of 6.7 percent which is below the norm, I don't know, how can anybody say that under the current circumstances they have the reasonable return, everything is negative, everything says they're not gaining a reasonable return.

MR. KRIEGER: Okay, my, the tenor of my comments is not to decide for you, that's not my function merely to give you a, and I can tell you from a legal standpoint of view, your view on reasonability or lack thereof is justified and justifiable.

MS. LOCEY: Are there other circumstances that we as a board should consider regarding the overall picture of reasonable return? Reasonable return, very first thing that came to my mind was profitability, but that's not the only criteria, so I, my thinking went to what is the industry standard and it's significantly below that, is there anything else we should be considering as a board because I don't know of anything else?

MR. KRIEGER: If all I can say to you is if you decide that the only thing that's offered is a standard suggested to you is a standard, is an industry, basically an industry standard, if you decide to not to

follow that standard and to apply some other standard of reasonability you must have some standard to apply.

MS. LOCEY: And I don't.

MR. KRIEGER: And that you cannot create a necessarily out of whole cloth, it would have to be, you'd have to rely on some evidence and here the problem is that no evidence has been placed before you other than that, and so you're in a position of basically in a position of yes or no, take it or leave it, no alternative has been suggested to you with respect to that particular standard.

MS. GANN: Can I ask a question too? Dan, does your client have any plans to perhaps change the deli itself to somehow bring in more business. Are there any plans for that or is it just that they're really looking to bring in more income with the additional two apartments?

MR. BLOOM: As far as I know, it's just to try to supplement the continuing declining income of the store with hopefully a positive cash flow on the income from the apartment because they have tried everything and the only thing that keeps them going right now is the rent.

MR. LUNDSTROM: Madam Chairman, a comment, taking Andy's four points and working backwards the last criteria.

MR. KRIEGER: Let the record reflect they're not my four points.

MR. LUNDSTROM: I stand corrected.

MR. KRIEGER: Four points which I enunciated but I did not recreate.

MR. LUNDSTROM: Item 4, it was not self-created, I think we can concur with that, that this situation was not self-created. Number three, the required variance would not alter the character of the community.

MR. KRIEGER: Essential character. The reason I emphasize that is this, you must presume that however suspicious you may be of this personally that you must always presume that the legislature intended the words in the statute so if they included that word in there, there's a reason that they included that word, it wasn't accidental. So the standard is the essential character of the neighborhood, that means that you must find in your mind not only the character of the neighborhood but whether it is how shall I say at its core, its essential character as opposed to its surface appearance. There have been a number of individuals that have spoken to you tonight about what they believed to be the character of that particular neighborhood and I would suggest to you that what they were talking about is the essential character of the neighborhood, not the surface characteristics.

MS. GANN: With that being said, is that part of the parking here that could be some folks' issues, is that along the same lines as what you're talking about?

MR. KRIEGER: Will not alter, yes.

MS. LOCEY: I think it has more to do with the multi uses that are in this, they're all non-conforming uses, there are multi-family dwellings, it will not essentially change the characteristics of the neighborhood because the neighborhood is already diverse.

MR. KRIEGER: Let me give you a clear example, I would suggest to you given this neighborhood it's anything but clear so I will choose a clearer example. Let us suppose that you had a use variance application for

somebody who wanted to put a multi use dwelling in an area where there are only single family residential there were no multi use dwellings, the argument could be made then under such a circumstances and would be probably a persuasive argument that allowing a, multi use dwelling that that circumstances would alter the essential character of that neighborhood. This is as I pointed out is a completely different application, a completely different character and it could reasonably be viewed as anything but clear.

MS. LOCEY: Well, I don't think it would change the character of the neighborhood.

MR. LUNDSTROM: I concur and also I have learned not to try and paraphrase what our attorney is saying, I will just make reference to it again, working backwards number two.

MR. KRIEGER: Unique hardship.

MR. LUNDSTROM: Yeah, again.

MR. KRIEGER: Hardship to this property is unique and not shared by other properties in the neighborhood, this is a finding that you have to make.

MR. LUNDSTROM: And I think I would not have a problem making that finding.

MS. LOCEY: I agree, it's the only retail market in the neighborhood.

MR. LUNDSTROM: And last item is the reasonable return.

MS. LOCEY: Which I think we have exhausted.

MR. KRIEGER: Yes, I think you have now discussed all four criteria.

MR. LUNDSTROM: Would the attorney, would the chair prefer that we handle each of the two, the addition of the two family house and additional parking lot separately or handle as one motion?

MR. KRIEGER: Normally speaking, I would say that that's up to you. My understanding of this particular application is in order for them to proceed, they need both applications, so it's immaterial if they were to get one and not get the other, it would be of no particular value to them so you might as well vote them together if that's your desire.

MS. LOCEY: If this board grants a variance for the five parking spaces can the planning board then entertain the exact location or perhaps reconfigure the plan to perhaps make it more amenable to the neighbors who have expressed some concern?

MR. KRIEGER: Yes, they can reconfigure, what they can't do is if you grant them five, they can't give them six, they can't limit them to four, they're bound by the number that you give them, you tell them what, you're in charge of what, they're in charge of how.

MS. LOCEY: But the five parking spaces are required as per calculation the size of the property and the uses and that sort of thing?

MR. BABCOCK: Yes.

MS. LOCEY: So that's the number that we need to look at?

MR. BABCOCK: That's correct.

MS. LOCEY: We could not recommend four spaces?

MR. BABCOCK: That's correct and there's no room for anymore, it is what it is.

MR. LUNDSTROM: And there are five dwelling units that would end up being part of the property.

MS. GANN: Having said all of that, with the easements being granted, I'm not a lawyer, Andy, so I don't know how that all sort of works, assuming that, you know, it runs smoothly and there will be no problems with, you know, down the line I'm talking about cause I'm not sure they granted the easement to Michael Faracellia but would that cause any problems for them going forward?

MR. KRIEGER: Okay, first of all, the easement as I understand it the over which is what this amounts to the offer of an easement is absolute and unconditional which it would have to be, you may if you decide to do so condition approval on the granting of that easement as outlined in this offering by the actual recorded document, you may make that a condition if you wish, if there's any doubt about it. I think certainly as an actual matter the applicant if they get a variance if they're successful in getting a variance they have to make up the rest of the parking spaces someplace and it's been amply demonstrated they don't, there aren't a lot of other options so but as I say, you may make that a condition if you so choose.

MR. BABCOCK: I think the applicant stated that they will have the easement as long as this is approved. If this is not approved, there is no reason for the easement so they'll move forward to get the easement and put that in the deeds and we would I would assume the Planning Board's going to ask for that, if not, at the time of the building permit I'm sure they would support that.

MR. KRIEGER: Well, I know for a certainty that the planning board is going to ask for it, an actual easement in recordable form in the deed.



MR. BABCOCK: But I don't think the neighbor wants to give it if it's not going to be used so I think they need this board's approval and then they'll go move to that step.

MR. KRIEGER: I agree and that's why I suggest that you may wish to make actual recorded easements granting of actual recorded easements a condition merely to tie up this loose end, not that I have any doubt that that will happen but simply to tie up.

MR. LUNDSTROM: Madam Chairman, may I ask if counsel would verbalize on what the motion he would feel comfortable here would be instead of us trying to put a motion together?

MS. LOCEY: It's pretty straightforward.

MR. KRIEGER: It is.

MR. LUNDSTROM: I'm thinking with this condition of approval if that should or should not be in it there should be some statement that the four steps have been met.

MR. KRIEGER: All you have to do is move to grant the use and parking variances requested by the applicant with the condition that before building permits, a building permit is issued the easement as represented by the applicant must be in place.

MR. LUNDSTROM: Madam Chairman, that sounds acceptable to me, I'd like to make such a motion, so moved.

MS. LOCEY: Second it.

ROLL CALL

MR. LUNDSTROM            AYE

March 13, 2006

65

MS. LOCEY	AYE
MS. GANN	AYE

MR. LUNDSTROM: Motion to adjourn.

MS. LOCEY: Second it.

ROLL CALL

MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MS. GANN	AYE

Respectfully Submitted By:

Frances Roth